

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)	FEDERAL COMMUNICATIONS COMMISSION
)	OFFICE OF THE SECRETARY
Biennial Regulatory Review -- Amendment of Parts)	
0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and)	FCC 98-25
101 of the Commission's Rules to Facilitate the)	
Development of and Use of the Universal Licensing)	WT Docket No. 98-20
System in the Wireless Telecommunications Services)	

To: The Commission

COMMENTS

Superior Technologies, Inc., (Superior) by its attorney, hereby submits comments regarding the Commission's Notice of Proposed Rulemaking (NPRM) released on March 18, 1998. In support whereof, the following is respectfully submitted:

1) Superior supports the Commission's efforts to utilize the Universal Licensing System (ULS) in the Part 22 services. Undersigned counsel's experience in using in the ULS filing system and FCC Form 601 in the recently concluded LMDS auction proceeding demonstrated that the computerized, paperless filing offered by the ULS is a tremendous improvement over paper filings. In addition to the increased ease of filing afforded by the ULS, it should become much easier and faster to discuss a particular application with the staff. The staff will no longer have to rummage

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through reams of paper¹ to find a particular filing and the staff will be able to immediately access a filing merely by pointing and clicking onto the correct computer screen.

2) While Superior fully supports the Commission's efforts to make electronic filing possible in the Part 22 and other services, Superior has several concerns regarding the Commission's proposed consolidation of some of the existing rules. The Commission's efforts to combine numerous services currently governed by different rules sections into one rule section, while conceptually pleasing, poses some problems because Part 22 VHF and UHF paging services are not licensed in the same manner as other services, such as PCS or IVDS. Therefore, Superior suggests that clarification or reconsideration of several points would serve the public interest. Also, as discussed below, Superior suggests that attention be given to the use of the ULS system with STA requests and other "emergency" filings.

**Request for Clarification of Definitions of "Geographic"
and "Site Specific" Licensees**

3) The Commission has proposed permitting a Part 22 paging carrier to combine all existing sites into one "geographic" license even if that carrier does not win the "geographic" license at the auction. NPRM, proposed rule §1.929(f)(5), Appendix C-22. Does that mean that an existing carrier

¹ This is not intended to criticize anyone's method of handling paper documents. The simple fact is that paper filings are bulky, especially when one considers how many applications, requests, motions, pleadings, and other documents are filed with the WTB and its various divisions. Moreover, those documents must be placed in files which, in turn, must be placed on shelves, desks, or tables. It's amazing more information does not become misplaced at the Commission, which is a credit to the staff. However, papers do become misplaced, and even if they are on the desk and otherwise in plain view, they are sometimes difficult to locate while on the telephone with someone who is interested in discussing the filing. The Commission has already acknowledged in the Part 22 services that paper is burdensome by requiring the filing of microfiche, rather than multiple paper, copies, of applications, pleadings, etc. Electronic filing will certainly eliminate much wasted time which is spent merely looking for various and numerous documents.

with multiple sites already licensed under a single call sign will be considered to be a “geographic” licensee under the proposed rules without needing to file a request with the Commission, or is a multiple-site, single license carrier treated as a “site-specific” licensee until the filing of the request?

4) Proposed rule §1.929, NPRM, ¶ 38, Appendix C-21, provides that geographic licensees and site-specific licensees, will be treated differently regarding system engineering changes with regard to what constitutes major and minor changes. It does not appear clear from the NPRM why an existing licensee with multiple call signs for numerous stations which are registered with the ULS system, which stations operate on the same paging frequency, should be treated differently from a party with the same system covering the same area, but which operates on a different frequency and whose system is contained under a single authorization. Superior requests that the Commission explain why two otherwise similar systems will receive differing treatment under the proposed rules.

Part 22 UHF/VHF Paging Systems Have Unique Engineering Considerations

5) Paragraph 33 of the NPRM states that

in general, we are not proposing to make major substantive changes to our rules as part of the process, but simply to eliminate unnecessary or outdated requirements and conform inconsistencies in our rules where feasible. We are also mindful that in some instances, it may be necessary to retain service-specific components to our processing rules that reflect legitimate technical, operational, or policy considerations that are unique to a given service or class of services.

6) Proposed rule §1.929(c)(1),(2),(3),(4) provides that “site-specific” Part 22 VHF/UHF paging licensees will not be able to increase antenna height, increase power, relocate, or increase service area except via major filing. Currently, paging licensees have the flexibility to make such modifications, and the changes are considered minor modifications, provided that the composite

interference contour is not expanded. Second Report and Order and Further Notice of Proposed Rulemaking 12 FCC Rcd. 2732, 2746 ¶ 19 (Comm'n 1997). For instance, under the current rules, a paging licensee may install a high power transmitter in the middle of its system without obtaining prior approval provided that the interference contour is not expanded and regardless of whether the service area is expanded.

7) Moreover, Part 22 VHF/UHF paging licensees are currently allowed to relocate sites, for instance, because a site lease is lost or because a better site lease exists at another location. Such modifications necessarily include coordinate changes and some adjustments to the transmission system including some combination of increases/decreases in antenna HAAT and ERP and possibly an antenna change. For instance, a relocation may entail selection of a new antenna while increasing the antenna HAAT and ERP, or may entail keeping the same antenna, while moving to a lower site above average terrain while increasing the ERP.

8) The Commission has moved away from the concept that an expansion of a service area necessarily entails a substantial system modification, provided that the interference contour is not expanded. Second Report and Order and Further Notice of Proposed Rulemaking 12 FCC Rcd. 2732, 2746 ¶ 19 (Comm'n 1997). Because it is the existence of interference signal overlap at the service area of a protected station which is of concern, 47 C.F.R. §22.537(a)(1) (1997), expansion of the service contour, if the interference contour remains static, is irrelevant. This system configuration flexibility has greatly enhanced the ability of UHF/VHF paging companies to develop their systems while not at all harming potential market entrants. For these reasons, the Commission should ensure that Part 22 UHF/VHF paging licensees retain the system construction/ modification/ development flexibility which they currently enjoy.

9) It may be that the Commission intends to keep the system development flexibility currently afforded to “site-specific” Part 22 UHF/VHF paging licensees. Proposed §1.929(f)(5) provides that a minor modification is “any change to a site where the licensee’s interference contours are not extended . . .” However, proposed §1.929(c)(1-4) classifies “any” of the changes discussed above as “major” and appears to be in tension with proposed §1.929(f)(5) which permits “any” change provided that the interference contours are not expanded. Accordingly, §1.929(f)(5) could be read to include as minor modifications only those modifications which are not discussed in 1.929(c)(1-4), such as modifications to lower antennas and/or ERP.

10) Consequently Superior suggests the following revision to proposed §1.929(c):

In addition to those changes listed in subparagraph (b) above, the following are major changes applicable to stations licensed to provide base-to-mobile, mobile-to-base, mobile-to-mobile, or repeater communications ~~on a site-specific basis~~, except to the extent that a geographic licensee does not extend its interference contour into a protected service area and except to the extent that a site-specific licensee does not increase its interference contours:
. . . .

In view of the proposal suggested immediately above, proposed rule §1.929(f)(5) not be adopted. Superior considers that the rule proposed herein clarifies that existing flexibility is not being lost and the proposal suggested herein has the added benefit of combining two proposed rules into one.

11) Proposed FCC Form 601 Schedule J requires paging applicants to submit, inter alia, radiation center height above average terrain and ERP along the 8 cardinal bearings. The Commission has proposed eliminating the requirement that applicants provide information relating to “antenna model, manufacturer, and type . . .” NPRM, at ¶ 82. Superior suggests that the Commission reconsider the elimination of the antenna model information from the Commission’s filing requirements.

12) While the Commission's proposal that interference contours may not be expanded might superficially suggest that antenna model information is superfluous, knowledge of the antenna model is critical in making the determination of how the interference contour is formed. For instance, without antenna model information, the Commission and the public will be unable to determine whether the ERPs listed for the eight cardinal bearings on Schedule J emanate from calculations utilizing an appropriate antenna pattern showing an acceptable front-to-back ratio.² This is very important in Part 22 VHF/UHF paging because these stations have been engineered to abut one another based upon contour protection.³ The unscrupulous may attempt to extend their reach by using a non-conforming antenna pattern which claims too great a front-to-back ratio. A mere listing of differing ERPs does not provide enough information to determine whether the antenna system complies with the Commissions' requirements.

13) Moreover, Part 22 VHF/UHF paging licensees are required to provide contour protection to co-channel stations and the protected area consists of "the service area of such base transmitters." 47 C.F.R. §22.537 (1997). This protection is afforded along the entire service contour of the licensee, not just at those points which coincide with the eight cardinal bearings. Ram Mobile Communications of Colorado, Inc., 4 FCC Rcd. 2384 ¶¶ 5-6 (Mob. Serv. Div 1989); Page-U, Inc., 2 FCC Rcd. 6748 ¶ 4 (Mob. Serv. Div. 1987); Revision and Update of Part 22 of the Public Mobile

² The maximum front-to-back ratio permitted in VHF and UHF paging is 27 dB. 47 C.F.R. §§22.567(c)(2),(d)(3),(e)(2),(f)(3).

³ Unlike 929 MHz or 931 MHz paging stations which have estimated interference contours set by rule based upon antenna height and ERP which assumes a uniformly circular service and interference contours, 47 C.F.R. §§90.493(b), 22.537(e),(f), protection to Part 22 VHF/UHF paging stations and calculation of the varying distances to the interference contour is based upon engineering design of which antenna selection is a vital consideration.

Radio Services Rules, Report and Order, 95 FCC2d 769, 780 ¶ 33 (Comm'n 1983) ("a highly directionalized facility can show interference free operation along the interstation direction, but cause interference along another nearby azimuth."). Without knowing the antenna model, it will be impossible to determine whether a licensee is properly protecting its neighbor along non-cardinal bearings. Thus, failure to require the antenna model information could cause careless or intentional encroachment upon protected service areas. From the perspective of those parties which are interested in protecting their neighbors, how is that to be done if it cannot be determined from the Commission's files how to develop the neighbors' complete contour, including service area existing along non-cardinal bearings?

14) Also, there is some value in requiring an applicant to certify to the Commission that it is going to use a certain type of antenna. To the extent that the Commission determines that the antenna model is not an important piece of information, the unscrupulous will seize upon to install any variety of antenna on the basis of "who cares?" In the absence of a rule requiring a licensee to represent to the Commission what kind of antenna it is employing, attempting to show that incorrect ERPs placed on Schedule J were the result of "computational or transcription errors," or a mistaken use of an incorrect pattern, or a misunderstanding of the Commission's rules that antenna models are irrelevant, rather than the result of a concerted effort to deceive, would be most difficult. Requiring submission of antenna information would ensure as much as possible that the ERPs provided in Schedule J are correct.

**ULS/STA Filing Is Possible If The ULS is Programmed
To Promptly Alert the Staff of the Filing**

15) Regarding the Commission's proposal that certain letter requests, such as for special temporary authorizations, be eliminated and that such filings be made through the ULS, we respectfully request consideration of the following. NPRM, ¶¶ 28-29. The idea of filing STA requests and other "emergency" filings through the ULS system is not an unworkable one, but procedures are required to ensure that the staff is alerted to the need to review the STA if the filing is made through the ULS. In order for an STA/ULS approach to work, the Commission needs to ensure that the ULS system immediately alerts the staff to fact of the STA filing to ensure a prompt review of the STA and a prompt determination as to whether the STA should be granted. The NPRM does not describe how, or whether, the ULS would notify the staff that an "emergency" filing has been made. Without implementation of a ULS staff notification procedure, there is the possibility that the STA request would not receive appropriate and timely consideration.⁴

16) A party seeking an STA is extraordinary relief, perhaps in an emergency situation. Often times a request for an STA is not associated with a specific application, such as when a communications tower topples in severe weather which requires immediate authorization for temporary facilities pending tower reconstruction. Even in cases where an STA is related to an underlying application, STAs generally suggest some urgency which likely would not be served by

⁴ For entities represented by counsel it is likely that counsel would informally alert the staff to bring the matter to the staff's attention. However, it seems that the Commission should adopt a procedure in which the staff is formally notified by the ULS system to ensure that STAs and other emergency filings are not inadvertently overlooked even after informal contact. As the saying goes, "out of sight, out of mind," and storage of information in a computer system is definitely out of sight. Today documents styled "STA" or "emergency" can receive immediate review to determine whether an actual emergency exists. However, unless the Commission programs the ULS to alert the staff to the "emergency" filing, the ULS may keep the "emergency" filing a secret.

merely combining the STA with a pending application so that the STA is processed at the time the application is reached for processing according to the ULS's tickler system.

Proposed E-Mail Notifications


17) The Commission has proposed permitting licensees to choose regular mail or e-mail to receive notifications. NPRM, at ¶ 58. Because each message delivery system has its draw backs, it is suggested that licensees be given the option of selection to receive notification through both methods. It would seem that if the Commission were going to establish an e-mail notification system, it would not impose a significant burden to send simultaneously an e-mail containing a copy of the paper notification. However, the Commission should not adopt an e-mail only notification procedure. While such a procedure is not specifically mentioned in the NPRM, it is possible that it might come under consideration. While e-mail is a tremendous tool, we think it more likely that there would be a problem with e-mail delivery, because of the complex system involved in sending the e-mail compared to the well established standard mail delivery system.⁵

⁵ It is recognized that to an e-mailer, the system of sending e-mail looks facile. However, by the time an e-mail reaches a recipient it has been through at least two, and generally more, computer systems. For instance, those receiving e-mail with dial-up Internet connections will have their e-mail go through at least three computers, not counting routers. The chance for loss of data over such a network is real, especially where the recipient is not expecting the notification. Moreover, sometimes e-mail is delayed, for whatever reason, either on the network or at the dial-up computer. Eventually the e-mail is released and received by, for instance, Netscape's e-mail program which catalogues the e-mail by date sent rather than by date received. If the e-mail had been delayed, several intervening e-mail receipts may cause the recipient to miss a prompt in the e-mail program that the FCC had e-mailed a notification. Finally, a recipient's hard disk could crash shortly after receiving an e-mail and the recipient may never know that the FCC sent a notice.

WHEREFORE, in view of the information presented herein, it is respectfully submitted that the Commission adopt the ULS proposals with consideration of the suggestions made herein.

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